

— Deposition of Claudio Duarte —

HERCULES MARINE SERVICES CORPORATION VS. BOB CASALES

PAGE 1 TO PAGE 44

CLAUDIO DUARTE - 2/11/98

DEVANEY REPORTING SERVICE

CONDENSED TRANSCRIPT AND CONCORDANCE

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(1) IN THE DISTRICT COURT OF BRAZORIA COUNTY, TEXAS
 239th JUDICIAL DISTRICT
 (2) HERCULES MARINE SERVICES
 (3) CORPORATION
 (4)
 (5)
 (6) VS.
 (7)
 (8) BOB CASALE
 (9)
 (10) DEPOSITION OF CLAUDIO DUARTE
 (11) On February 11, 1998, beginning at 2:30 p.m.,
 (12) in the Brazoria County Courthouse, Room 318A,
 (13) Angleton, Texas, before me, Barbara DeVaney,
 (14) Certified Shorthand Reporter and Notary Public in
 (15) Harris County, for the State of Texas, appeared
 (16) CLAUDIO DUARTE, who being by me first duly sworn,
 (17) gave his oral deposition in said cause pursuant to
 (18) notice and subpoena.
 (19)

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(2) STIPULATIONS FOR THE DEPOSITION OF
 CLAUDIO DUARTE
 (4) TAKEN ON: February 11, 1998
 BEGINNING: 2:30 p.m.
 (6) SIGNATURE:
 (7) 1. () Is waived.
 (8) 2. (X) The witness shall read and sign this
 deposition before any notary by:
 (9) (X) reading copy and signing an
 affidavit.
 (10) () cusing to the reporter's office.
 (11) 3. () If the original deposition is released from
 the reporter's possession to obtain
 (12) signature and is not returned for timely
 delivery to the custodial attorney, a copy
 (13) may be used, unsigned and uncorrected. It
 is also understood that in the event it is
 (14) not returned, the court reporter assumes no
 further responsibility for the original
 (15) deposition.
 (16) OBJECTIONS:
 (17) 1. (X) All objections will be made in accordance
 with the Texas Rules.
 (18) 2. () All objections will be made in accordance
 with the Federal Rules.
 (19) 3. () Other
 (20) DELIVERY OF CERTIFICATE PAGES:
 (21) 1. () To be delivered with return receipt.
 (22) 2. (X) Delivery requiring return receipt waived.
 (23)

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(1) APPEARANCES
 (2) MR. JOHN T. McDOWELL of the law firm of
 (3) McDowell Collier, L.L.P., 1301 McKinney, Suite
 (4) 3700, Houston, Texas 77010, appearing on behalf
 (5) of Bob Casale.
 (6) MR. Wm. BRUCE STANFILL of the law firm of
 (7) Belme, Maynard & Parsons, L.L.P., 1300 Post Oak
 (8) Boulevard, Suite 2500, Houston, Texas 77056,
 (9) appearing on behalf of Hercules Marine Services
 (10) Corporation.
 (11) MR. BRYAN A. DOWNING of the law firm of Griggs
 (12) & Harrison, P.C., 1301 McKinney, Suite 3200,
 (13) Houston, Texas 77010, appearing on behalf of
 (14) Hercules Marine Services Corporation.
 (15) ALSO PRESENT: Mr. Bob Casale
 (16) Mrs. Stella Casale
 (17) Ms. Aida Aluizo,
 (18) Interpreter
 (19)
 (20)
 (21)
 (22)

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(1) INDEX
 (2) THE WITNESS: CLAUDIO DUARTE
 (3) EXAMINATION: PAGE
 (4) By Mr. McDowell 5
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 (6) FURTHER EXAMINATION:
 (7) By Mr. McDowell 41
 (8) EXHIBITS:
 (9) None marked
 (10)

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- (1) (Aida Aluizo was duly sworn as
- (2) interpreter for the Spanish language.)
- (4) CLAUDIO DUARTE, after having been first
- (5) duly sworn, testified through the interpreter
- (6) as follows:
- (8) EXAMINATION
- (9) BY MR. McDOWELL:
- (10) Q Mr. Duarte, my name is John McDowell. I
- (11) represent Mr. and Mrs. Casale in the lawsuit
- (12) that Hercules filed against them and they in
- (13) turn filed a suit against Hercules. Do you
- (14) understand that?
- (15) A Yes.
- (16) Q Have you ever given sworn testimony before?
- (17) A Well, it's been - I have been investigated
- (18) before. I don't know what they're looking for
- (19) in this case and why they're investigating me.
- (20) Q Okay. Mr. Duarte, this civil lawsuit has
- (21) nothing to do with the criminal investigation
- (22) of Hercules. Do you understand that?
- (23) A Well, then the case where they investigated me
- (24) does not have anything to do with this?
- (25) Q I don't know anything about you being

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- (1) investigated.
- (2) A Well, what I want to know is what kind of
- (3) demand Casale is putting against Hercules?
- (4) What is it that they want?
- (5) Q Okay. Mr. Duarte, we are here to ask you
- (6) questions about Hercules.
- (7) A Okay. But I want to know so I can answer the
- (8) questions. Because of Casale, I'm without a
- (9) job. My friends are without a job. I
- (10) depended on that for my children. And because
- (11) of them, I'm without a job. I have a stack
- (12) this high of bills.
- (13) Q Why is it that you think that that is because
- (14) of Mr. Casale?
- (15) A Because he's always caused problems for
- (16) Hercules.
- (17) Q Okay.
- (18) (Off-the-record discussion.)
- (21) THE WITNESS: I'm not arguing with
- (22) you. What I'm telling you is the truth
- (23) because I have been unemployed since then.
- (24) MR. McDOWELL: Okay. I know that
- (25) he's been unemployed, but I also know it was

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- (1) not Mr. and Mrs. Casale that reported Hercules
- (2) to the TNRCC.
- (3) MR. STANFILL: And I'm going to
- (4) object that that assumes facts not in evidence
- (5) and that the question, to the extent that
- (6) there's a question there, is clearly vague
- (7) because they've obviously reported them to
- (8) TNRCC many times in the past.
- (9) MR. McDOWELL: Bruce, I'm not
- (10) asking questions. I'm making statements that
- (11) you asked to be transcribed by the court
- (12) reporter.
- (13) MR. STANFILL: I understand that.
- (14) Be straight with the man. He obviously is
- (15) having trouble understanding the process.
- (16) Clarification is necessary, no question, okay?
- (17) But be straight with the man. That's all I'm
- (18) asking. Be fair with him.
- (19) MR. McDOWELL: I certainly intend
- (20) to be fair with Mr. Duarte.
- (21) Q (BY MR. McDOWELL) Mr. Duarte, you need to
- (22) know that this investigation by TNRCC was not
- (23) as a result of Mr. and Mrs. Casale's
- (24) complaints.
- (25) MR. STANFILL: Are you asking -

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- (1) MR. McDOWELL: I'm not asking him
- (2) any questions, Bruce. I'm trying to explain
- (3) this and you want it on the record and I'm
- (4) doing it on the record.
- (5) MR. STANFILL: That's fine.
- (6) MR. McDOWELL: Then be quiet.
- (7) MR. STANFILL: No. You're asking
- (8) him to assume facts.
- (9) MR. McDOWELL: I'm not asking him
- (10) to assume anything.
- (11) MR. STANFILL: Clearly you are.
- (12) You're telling him this is the gospel. Assume
- (13) this and now we're going to go on from here.
- (14) MR. McDOWELL: Let me just take
- (15) the deposition, okay?
- (16) Q (BY MR. McDOWELL) Mr. Duarte, state your age,
- (17) please.
- (18) A I'm 44 years old.
- (19) Q And you're married with children?
- (20) A Yes.
- (21) Q And where is your residence address?
- (22) A The one that you just asked me about.
- (23) Q Okay. I did not ask him. The court reporter
- (24) asked him.
- (25) A Well, it's the same address.

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- (1) Q 110 West Marion?
- (2) A Yes.
- (3) Q Who lives there with you?
- (4) A Myself, my wife and my children.
- (5) Q How long have you worked for Hercules?
- (6) A 14 years.
- (7) Q What kind of work have you done for Hercules?
- (8) A Welding and cleaning barges.
- (9) Q Mr. Duarte, have you cleaned barges every year for the last 14 years or were you a welder
- (10) part of that time?
- (11) A For part of the time, I was welder. In other
- (12) words, when there was no work cleaning the
- (13) barges, I was welding.
- (14) Q Have you sandblasted barges?
- (15) A Cleaning barges is one thing and sandblasting
- (16) is another thing.
- (17) Q Right. Have you sandblasted barges?
- (18) A No. I'm not a sandblaster.
- (19) Q Okay. Has he seen sandblasting - have you
- (20) seen sandblasting operations done at Hercules
- (21) where the barge is pulled up out of the water?
- (22) A Well, they did sandblast, but like I told you,
- (23) I'm not a sandblaster.
- (24) Q But that operation is performed at Hercules -

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- (1) was performed at Hercules?
- (2) A They did that.
- (3) Q Okay. Over what period of time?
- (4) A I wouldn't be able to tell you.
- (5) Q Within the last two or three years?
- (6) A I wouldn't be able to tell you, because when I
- (7) was working, I would be working in a different
- (8) area than they would be, so I wouldn't be able
- (9) to tell you that.
- (10) Q Have you ever seen in the last 14 years
- (11) sandblasting done of barges while they were in
- (12) the water at the dock?
- (13) A That I remember in the water, no.
- (14) Q Have you ever seen, Mr. Duarte, any barges
- (15) that Hercules vented during the evening?
- (16) A Vented, like how?
- (17) Q Like where the hatches are taken off at night
- (18) and the chemicals that are in the barges are
- (19) allowed to escape during the night.
- (20) A In the water, no.
- (21) Q I probably wasn't clear with my question. I'm
- (22) not talking about in the water. I'm talking
- (23) about barges at the Hercules facility that
- (24) were vented during the evening hours.
- (25) A No.

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- (1) Q How did they vent barges at Hercules?
- (2) A Well, when I started working, we would check
- (3) the direction of the air before we vented the
- (4) barges and made sure that the air was not
- (5) blowing to the houses that were in the area.
- (6) Q Why?
- (7) A How?
- (8) Q Why? Why would you determine that?
- (9) A Because it was a rule that the man had because
- (10) they were always complaining that it smelled
- (11) really bad even if there were no houses to
- (12) that direction.
- (13) Q Was that process ever done at night?
- (14) A During the day we would start working at 7:00
- (15) o'clock in the morning.
- (16) Q Was the venting process ever done at night?
- (17) MR. STANFILL: Objection; asked
- (18) and answered.
- (19) MR. McDOWELL: But he can still
- (20) answer the question.
- (21) A What was the question that you asked?
- (22) Q (BY MR. McDOWELL) If the venting procedure of
- (23) the barges was ever done at night?
- (24) MR. STANFILL: Same objection.
- (25) A Well, whenever we worked on a barge that we

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- (1) weren't finished with it, we would work from
- (2) 8, sometimes 10:00 o'clock at night. But as I
- (3) recall, none of the barges stayed open. When
- (4) everything was finished, we would put
- (5) everything up. We would close everything up.
- (6) Q Okay. Your testimony under oath, Mr. Duarte,
- (7) is that a barge was never left open during the
- (8) evening, correct?
- (9) A That I remember, no.
- (10) Q Mr. Duarte, did you ever smell bad fumes
- (11) coming out of a barge while you worked there?
- (12) A No. No.
- (13) Q What sort of respiratory equipment did you
- (14) wear while you were cleaning barges?
- (15) A There's different types of equipment that you
- (16) use. Not all the chemicals are the same. We
- (17) had small respirators and large respirators.
- (18) And we had special equipment for emergencies.
- (19) Q What was it that this special equipment was
- (20) protecting you from?
- (21) A If someone was working inside, they had an
- (22) accident inside, if somebody was working
- (23) inside and they had an accident, then they
- (24) would put this equipment on to go in there and
- (25) work inside.

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- (1) **THE INTERPRETER:** I'm not sure I
 (2) understand. He's saying if someone has an
 (3) accident, they have the equipment that is
 (4) still there and they go - to go into the
 (5) barge if there's still smell in the barge.
 (6) **Q (BY MR. McDOWELL)** Mr. Duarte, is it your
 (7) testimony that the respiratory equipment was
 (8) only worn when you were down inside of tanks
 (9) working?
 (10) **A** We had to vent it 45 minutes. And then we
 (11) would wash it inside, the tanks with water.
 (12) **Q** When you vented the tanks, explain that
 (13) process of how it was vented.
 (14) **A** We would scrape the barge. There's a vacuum
 (15) that we use to scrape the barge. Then we
 (16) would hook up the fans to run for 45 minutes.
 (17) We had a meter to test it.
 (18) **Q** Are you talking about the procedure after the
 (19) new equipment was put in last year?
 (20) **A** No, that we've always used. What I said we've
 (21) always done. You're talking about the
 (22) equipment that's installed right now, the
 (23) oxidizer?
 (24) **Q** The oxidizer.
 (25) **A** We haven't used. That apparatus we haven't

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- (1) used.
 (2) **Q** It's never been used, the new thermal
 (3) oxidizer?
 (4) **A** They installed it. We tested it. We had it
 (5) on for two hours by itself just to test it to
 (6) see if it worked okay. And everything worked
 (7) okay. But we already had this problem at
 (8) hand. We had already been six months without
 (9) cleaning any barges.
 (10) **Q** Are you aware of the federal requirement that
 (11) the barges had to be cleaned with the use of a
 (12) thermal oxidizer if the pressure was more than
 (13) half a pound, I believe it is?
 (14) **MR. STANFILL:** Assumes facts not
 (15) in evidence.
 (16) **THE INTERPRETER:** I'm sorry. That
 (17) was a lengthy question.
 (18) **Q (BY MR. McDOWELL)** It was too long. I'm
 (19) sorry. Let me try again. Do you know about
 (20) the federal regulation that required the
 (21) oxidizer to be used?
 (22) **MR. STANFILL:** Same objection.
 (23) **A** Well, I couldn't answer that question for you
 (24) because I'm only an employee. My supervisor
 (25) is the one that knew all that. He is the one

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- (1) that's supposed to know all the federal laws
 (2) the government has.
 (3) **Q (BY MR. McDOWELL)** Before the thermal oxidizer
 (4) was used, the vent process that they used
 (5) required that it be vented into the
 (6) atmosphere, didn't it?
 (7) **A** What are you saying, that it required before
 (8) venting?
 (9) **Q** The venting process, itself, vented the fumes
 (10) into the atmosphere, didn't it?
 (11) **A** Well, didn't I say we had been six months
 (12) without cleaning any barges?
 (13) **Q** I'm talking about the barges that they did
 (14) clean.
 (15) **A** Before this?
 (16) **Q** Right.
 (17) **A** Because like I said before, didn't I tell you
 (18) that we would get on the barges, open the
 (19) vents, and load the equipment?
 (20) **Q** And opening the vents released the gases into
 (21) the atmosphere?
 (22) **A** Well, clearly, when you vent the barge,
 (23) everything goes out into the air.
 (24) **Q** That's why you're concerned about which way
 (25) the wind is blowing?

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- (1) **A** That's what I said. That's why we had to see
 (2) which direction it was going, because that's
 (3) the order that we had from the office.
 (4) **Q** So is it a true statement that for 14 years,
 (5) every barge that was cleaned at Hercules was
 (6) vented into the atmosphere?
 (7) **A** Yes, because before, there was no oxidizer.
 (8) There was not anything. Because like I said,
 (9) we used a scraper with a vacuum and vent the
 (10) barge. We scrape all the liquids with the
 (11) vacuum. And that's it.
 (12) **Q** The oxidizer that was purchased was purchased
 (13) in 1994?
 (14) **A** I wouldn't be able to tell you that.
 (15) **Q** When you tested it last year, Mr. Duarte, did
 (16) it keep the fumes from going into the
 (17) atmosphere as it is designed to do?
 (18) **A** Last year? They just finished installing it
 (19) this year. How can you say it was last year?
 (20) **Q** 1997. This is 1998.
 (21) **A** Well, how can you say that anything went out
 (22) in the air? We were just testing it by
 (23) itself.
 (24) **Q** I'm not saying that. I'm asking, Mr. Duarte,
 (25) do you understand that the purpose of that

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- (1) oxidizer was to keep the fumes from going into
- (2) the air?
- (3) A Yes, but it wasn't finished. That's why we
- (4) never used it. But when we tested it, we
- (5) tested it by itself without any liquids or
- (6) anything.
- (7) Q So would it be a true statement that even
- (8) today, we don't know whether it works or not?
- (9) A What are you saying, that it works?
- (10) Q Whether it works or not, do we know?
- (11) A The apparatus, is that what you're talking
- (12) about?
- (13) Q Yes.
- (14) A Well, I wouldn't be able to tell you because
- (15) it's been a month since I've been there. The
- (16) yard is closed.
- (17) Q In the 14 years that you worked for Hercules,
- (18) Mr. Duarte, did you ever see waste water
- (19) discharged into the Intracoastal Canal?
- (20) A No.
- (21) Q In the 14 years that you worked for Hercules,
- (22) did you ever see water from the ballast part
- (23) of the barge pumped into the Intracoastal
- (24) Canal?
- (25) A The water they use to ballast the barges is

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- (1) city water. It's sweet water. It's sweet
- (2) water. They pump it into the canal because
- (3) it's not contaminated.
- (4) Q Was that the regular practice, to pump the
- (5) water from the ballast into the Intracoastal
- (6) Canal?
- (7) A Yes, but like I said, it was city water,
- (8) because we would put it in, ourselves, into
- (9) the barges.
- (10) Q Did you have a waste disposal system for any
- (11) of the sandblasting debris?
- (12) A I couldn't answer that question, because like
- (13) I told you, I didn't take care of that. And
- (14) there's always been boxes, containers that
- (15) they rent in the yard for the trash.
- (16) Q Mr. Duarte, were you ever asked by anyone at
- (17) Hercules to fill out a barge cleaning report?
- (18) A That paper always has to be filled out when a
- (19) barge is cleaned.
- (20) Q Did Mr. Ballinger ever ask you to fill out a
- (21) barge cleaning report and put the wrong
- (22) chemical down on the report?
- (23) A He did tell me and I did point out to him that
- (24) that was wrong chemical, but he said you do it
- (25) because I'm the one - because I know what I'm

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- (1) doing.
- (2) Q Did Mr. Ballinger ever ask you to write down
- (3) butanol when the real chemical in the barge
- (4) was cyclohexane?
- (5) A Yes. He was the one that gave me the order.
- (6) Q On how many occasions did he do that?
- (7) A I don't remember, maybe four or five barges,
- (8) maybe four or five barges.
- (9) Q When Mr. Ballinger asked you to write down the
- (10) wrong chemical, did you tell him that he was
- (11) incorrect?
- (12) A I told him that he was wrong and he said just
- (13) write it like this.
- (14) Q And you wrote it down like that because he was
- (15) your boss and you were afraid for your job?
- (16) A Yes. Like I said, I'm just an employee. If I
- (17) didn't do it, he was going to let me go if I
- (18) didn't do the work. And like I said, I needed
- (19) the work.
- (20) Q Mr. Duarte, do you believe if you didn't
- (21) falsify the records, that you would lose your
- (22) job?
- (23) A That's what I thought, because I told him from
- (24) the beginning that that was incorrect, and he
- (25) said just write it like that.

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- (1) Q Do you remember, Mr. Duarte, what time period
- (2) that took place in? When did that happen?
- (3) A I wouldn't be able to tell you because it's
- (4) been six or seven months since all this
- (5) process has stopped. I wouldn't be able to
- (6) tell you the exact date.
- (7) Q Do you believe it was in 1996?
- (8) A I don't know.
- (9) Q Did Mr. Ballinger ever tell you, Mr. Duarte,
- (10) that he did not want Mr. Casale or his lawyers
- (11) to know what was in the barges?
- (12) A No. He never said that to me.
- (13) Q Mr. Duarte, did Mr. Ballinger ever talk to you
- (14) about Mr. Casale?
- (15) A No, because like I said, I was just a worker.
- (16) They were the ones that managed the office in
- (17) front. I was just an employee.
- (18) Q Mr. Duarte, where did you get your information
- (19) earlier when you were talking about Mr. Casale
- (20) having something to do with why Hercules is
- (21) shut down now? Where did that information
- (22) come from?
- (23) A Because his name has always come out in the
- (24) paper, Casale and Hercules, Casale and
- (25) Hercules, Casale and Hercules.

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- (1) Q But no one from Hercules ever gave you any
- (2) information about Mr. Casale?
- (3) A No.
- (4) Q Where does the waste water go that is used in
- (5) the cold water wash of a barge?
- (6) A We have tanks, 63,000 gallon tanks that it
- (7) goes to. There's four tanks with that
- (8) capacity and then one other tank with 28,000
- (9) gallons.
- (10) Q Is that the same place that the waste water
- (11) goes in a hot water wash?
- (12) A Yes.
- (13) Q How much waste water is generated in a cold
- (14) water wash?
- (15) A That's another question that I can't answer
- (16) for you because they took care of all the
- (17) paperwork. They did that in the office so I
- (18) wouldn't be able to answer that.
- (19) Q Mr. Duarte, we don't want you to guess at
- (20) anything. If you don't know the answer,
- (21) that's fine. Just tell us that's not
- (22) something you know and that's okay.
- (23) A That's why I said, because I don't know. I
- (24) don't know exactly how many gallons were used.
- (25) Q Mr. Duarte, I was not asking you really

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- (1) exactly how many. I just wondered if you knew
- (2) in your mind approximately how many gallons
- (3) are used for a hot water or cold water wash?
- (4) A It depends on how the barge comes. If it's
- (5) real rusty, then that will depend how much
- (6) water is used. It all depends on the barge,
- (7) how dirty it comes.
- (8) Q Did you do any barge cleaning on the outside
- (9) of the barges?
- (10) A No.
- (11) Q They did not - you did not refurbish barges,
- (12) sandblast and repaint them there at Hercules?
- (13) A Cleaning barges outside of the canal, is that
- (14) what you're saying?
- (15) Q Outside or inside.
- (16) A You're asking outside or inside? Because
- (17) outside is where they take them out of the
- (18) crater.
- (19) Q Out of the canal, you mean?
- (20) A What is your question is what I want to know,
- (21) because when they take them outside is where
- (22) they take them out with a crane. And that's
- (23) what I want to know.
- (24) Q Did Hercules do any cleaning of the outside of
- (25) the barges when the crane was used to pull the

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- (1) barges up out of the canal?
- (2) A The barge first would have to be clean, gas
- (3) free before it was pulled out of the water.
- (4) Otherwise, it wouldn't be able to be pulled
- (5) out of the water, because first this would be
- (6) an inspector to go check it and make sure that
- (7) the barge could be taken out, whether the
- (8) barge could be taken out or not.
- (9) Q Did you do any of that work, Mr. Duarte, where
- (10) the barge was taken out of the water and
- (11) pulled up on those skids? But I don't know
- (12) how you can translate skid.
- (13) THE INTERPRETER: I'm sorry. He's
- (14) saying - I'm not sure if he's meaning crane
- (15) or what he's meaning. Crater? I apologize.
- (16) MR. STANFILL: Pull it out of the
- (17) slip and put it on wheels to move it around.
- (18) Q (BY MR. McDOWELL) Okay, Mr. Duarte, when the
- (19) barge was degassed and pulled out of the
- (20) water, what work would be done on it?
- (21) A Well, when they would take it out, it was
- (22) because there was a problem. There was a
- (23) crack or they had to put a platform. That's
- (24) when they would take it out. They would have
- (25) to repair the bottom.

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- (1) Q And was that repair work done at Hercules?
- (2) A That's the reason why I said that they would
- (3) take it out. Whenever there would be a crack
- (4) or a hole, then they would have to take it
- (5) out.
- (6) Q But that was not part of the barge work that
- (7) you did; you only cleaned the insides of the
- (8) barges?
- (9) A Whenever they would take the barge out, then
- (10) it was out of our hands. That would be the
- (11) welders.
- (12) Q And in your work as a welder, you didn't work
- (13) on barges?
- (14) A Yes, I worked on barges. In other words,
- (15) whenever they needed me, they would call me,
- (16) or whenever they would - they needed me
- (17) somewhere else, they would call me because I
- (18) was a welder.
- (19) Q I'm confused with what you told me earlier
- (20) about cleaning barges. I thought you only
- (21) worked as a barge cleaner cleaning the insides
- (22) of the barges.
- (23) A I don't understand what your question is.
- (24) That's why I don't understand your question,
- (25) because the barges are only cleaned in the

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- (1) area where the barges are cleaned. And I'm
- (2) not sure what your question is.
- (3) Q My question relates to the type of work you
- (4) performed out there. You cleaned the inside
- (5) of barges, correct?
- (6) A Yes.
- (7) Q You cleaned the outside of barges, correct?
- (8) A The outside, no. The outside is never
- (9) cleaned. Barges are only cleaned on the
- (10) inside. The tanks are inside. That's what
- (11) needs to be cleaned. The outside does not
- (12) need to be cleaned.
- (13) Q And when barges were pulled out of the water
- (14) for repair work, you would do welding on
- (15) barges?
- (16) A Clearly, because like I said, whenever they
- (17) would need me, then they would move me over
- (18) there to weld.
- (19) Q But you did not do any sandblasting of barges
- (20) while they were pulled out of the water?
- (21) A No.
- (22) Q Who was in charge of sandblasting the barges
- (23) when they were pulled out of the water while
- (24) you worked there?
- (25) A The person that would be in charge of all of

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- (1) that would be Larry because that would be --
- (2) he would decide who would be on it and he
- (3) would take care of all of that.
- (4) Q And Larry is Mr. Ballinger?
- (5) A Yes.
- (6) Q When the barges were pulled up out of the
- (7) water for welding or sandblasting or repair
- (8) work, did the wind direction have anything to
- (9) do with whether or not the work was performed?
- (10) A Well, like I said, whenever I would go do that
- (11) work, they would call me and everything would
- (12) already be done, so I don't know if they
- (13) checked the direction of the air before they
- (14) did all that. They would call me after
- (15) everything was done, because there was a
- (16) foreman, the welding foreman.
- (17) Q Who was that?
- (18) A He doesn't work there. He lives in Port
- (19) Lavaca now.
- (20) Q Do you remember his name?
- (21) A Delarosa, Gabriel Delarosa.
- (22) Q Do you know who he works for in Port Lavaca?
- (23) A No, I don't know. He's already retired. He's
- (24) an older man. I believe he's 65 years old.
- (25) Q Did Mr. Jackson ever ask you to write down the

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- (1) wrong chemical on a barge cleaning report?
- (2) A No.
- (3) Q Do you know Mickey Tiner?
- (4) A Yes.
- (5) Q How do you know Mr. Tiner?
- (6) A He worked there. He was the manager of the
- (7) yard.
- (8) Q Do you know when Mr. Tiner was the manager of
- (9) the yard?
- (10) A No, I don't remember.
- (11) Q When you first went to work for Hercules, was
- (12) Mr. Tiner the manager?
- (13) A Yes, he was the manager.
- (14) Q During the time that Mr. Tiner was the
- (15) manager, did you ever see any waste water
- (16) disposed of anywhere besides in a storage
- (17) tank?
- (18) A That I remember, no.
- (19) Q Did you have any contact with any of the
- (20) customers of Hercules?
- (21) A No.
- (22) Q Did you have any contact with the salespeople
- (23) for Hercules?
- (24) A No.
- (25) Q Have you applied for any jobs with any other

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- (1) barge cleaning companies here locally since
- (2) you were terminated?
- (3) A No.
- (4) Q Why not?
- (5) A Because I'm working for a welding job, but
- (6) that has nothing to do -- that's my problem.
- (7) It has nothing to do with this.
- (8) Q Are you working for a welding job for a barge
- (9) cleaning company?
- (10) A No. I'm looking for work. But this has
- (11) nothing to do with the investigation that
- (12) you're doing whether I'm working or not.
- (13) Q Are you being paid by Hercules?
- (14) A I'm still on unemployment.
- (15) Q Mr. Duarte, I want to make sure you
- (16) understand. I'm not doing an investigation
- (17) for the State of Texas.
- (18) A I understand. But you're out of line. That
- (19) has nothing to do with the investigation that
- (20) you're doing right now.
- (21) Q Well, whether you're working and whether
- (22) you're still getting paid by Hercules is
- (23) something that's important to me. And if you
- (24) think I'm asking you a question that is unfair
- (25) to you, the judge is next door and we can sure

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- (1) go ask him right now.
- (2) A I'm only telling you. But I know in reality,
- (3) I don't know if Hercules is paying me. I'm on
- (4) unemployment. I imagine by law, they have to
- (5) pay half of it. I don't understand. I don't
- (6) know if it's the company that pays half of it
- (7) or the unemployment office.
- (8) Q I understand. You're collecting a check from
- (9) the unemployment office right now?
- (10) A Yes.
- (11) Q You're not collecting any wages from Hercules?
- (12) A No.
- (13) Q Nor from anyone associated with Hercules?
- (14) A No. Since they let me go, I have nothing to
- (15) do with them.
- (16) Q Have you talked to Mr. Ballinger since you
- (17) were let go?
- (18) A No, for nothing. I've spoken with nobody.
- (19) Q Mr. Duarte, when you were cleaning barges over
- (20) the last 14 years and filling out the reports,
- (21) did you write down the chemical that was in
- (22) the barge each time?
- (23) A The 14 years that I'm talking about, in the
- (24) last three years is when they've given me -
- (25) put me in charge of doing that. But before

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- (1) that, there were other people that took care
- (2) of that. I didn't do it.
- (3) Q During the period of time that you took care
- (4) of that, I want to ask you if you cleaned
- (5) barges from the following list of chemicals.
- (6) I would like to read a list of chemicals and
- (7) you tell me yes or no if you wrote down that
- (8) you had cleaned barges with those chemicals in
- (9) them.
- (10) A But like I said, I only have from three years,
- (11) the last three years that I did the reports,
- (12) not anything before that.
- (13) Q I understand.
- (14) A You want to know what chemicals were managed
- (15) there, is that right?
- (16) Q Yes. Can you just tell me without me reading
- (17) a list?
- (18) A No. Read it.
- (19) Q Acetone?
- (20) A Yes.
- (21) Q Benzene?
- (22) A No.
- (23) Q B.T.X?
- (24) A Yes.
- (25) Q Butanol?

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- (1) A Would you let me see the way it's spelled?
- (2) Q Sure.
- (3) A Yes.
- (4) Q Cumene?
- (5) A Okay. Those chemicals were managed before
- (6) years past. Those are the chemicals that were
- (7) managed.
- (8) Q Before you began writing them down?
- (9) A Yeah. But like I said, those chemicals were
- (10) managed for the longest time.
- (11) Q Okay. When you say managed, you mean that
- (12) they were in barges that were cleaned by
- (13) Hercules?
- (14) A Well, just keep naming them and I'll tell you
- (15) yes or no.
- (16) Q Okay. Cumene?
- (17) A Yes.
- (18) Q Cyclohexane?
- (19) A Yes.
- (20) Q Diesel?
- (21) A Yes.
- (22) Q Dicyclopentadiene?
- (23) A No.
- (24) Q Diethylene glycol?
- (25) A Yes.

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- (1) Q Ethyl benzene?
- (2) A Yes.
- (3) Q 2-ethyl hexanol?
- (4) A Yes.
- (5) Q Ethanol?
- (6) A Yes.
- (7) Q Methanol?
- (8) A Yes.
- (9) Q Naphtha?
- (10) A Yes.
- (11) Q Toluene?
- (12) A No.
- (13) Q PY-Gas?
- (14) A Yes.
- (15) Q Propylene glycol?
- (16) A I don't remember that one.
- (17) Q Styrene?
- (18) A Yes.
- (19) Q Vinyl acetate monomer?
- (20) A No.
- (21) Q Unleaded gasoline?
- (22) A No.
- (23) Q Chloroform?
- (24) A Yes.
- (25) Q Methylene chloride?

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- (1) A Yes.
- (2) Q Perchloroethylene?
- (3) A No.
- (4) Q Trichlorethylene?
- (5) A No.
- (6) Q DAC oil?
- (7) A Yes.
- (8) Q Caustic soda?
- (9) A Yes.
- (10) Q Ammonia nitrate?
- (11) A No.
- (12) Q Calcium chloride?
- (13) A No.
- (14) Q Monoethanolamine?
- (15) A No.
- (16) Q M.T.B.E?
- (17) A No.
- (18) Q Crude oil?
- (19) A No.
- (20) Q Analon?
- (21) A Yes.
- (22) Q Ethyl and methyl acrylate?
- (23) A No.
- (24) Q Adiponitrole?
- (25) A No.

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- (1) Q Sorry. I can't pronounce these very good, but
- (2) I think the record should be clear that you
- (3) are looking at a list of these as I'm asking
- (4) you these questions. Tetrapropylene?
- (5) MR. STANFILL: Did we get an
- (6) answer on that one?
- (7) MR. McDOWELL: I think he said no
- (8) on the -
- (9) (The requested material was read.)
- (10) Q (BY MR. McDOWELL) Tetrapropylene?
- (11) A No.
- (12) Q C-5 crude?
- (13) A No.
- (14) Q Acetic acid?
- (15) A Yes.
- (16) Q Diethanolamine?
- (17) A No.
- (18) Q Butyl alcohol?
- (19) A Yes.
- (20) Q Ethylene glycol?
- (21) A Yes.
- (22) Q Piperylene?
- (23) A Yes.

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- (1) Q Dripolene?
- (2) A No.
- (3) Q That's the same thing. Resin oil?
- (4) A Yes.
- (5) Q Carbon tetrachloride?
- (6) A No.
- (7) Q Ethylene dichloride?
- (8) A Yes.
- (9) Q Propylene dichloride?
- (10) A Yes.
- (11) Q Trichloroethane?
- (12) A Yes.
- (13) Q N.S. solvent?
- (14) A Yes.
- (15) Q Mr. Duarte, when you vent a barge, how much
- (16) time does it take for the odor to leave the
- (17) barge?
- (18) A That's what I said, 45 minutes to vent it and
- (19) then they're washed.
- (20) Q Okay. So if you vent a barge, if you open the
- (21) vent, 45 minutes later, the smell is gone,
- (22) right?
- (23) A Yes.
- (24) MR. McDOWELL: Those are all the
- (25) questions I have. Thank you.

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- (1) MR. STANFILL: Can we take a short
- (2) break?
- (3) MR. McDOWELL: Sure.
- (4) (Whereupon, a recess was held.)
- (5) EXAMINATION
- (6) BY MR. STANFILL:
- (7) Q Mr. Duarte, my name is Bruce Stanfill. You
- (8) understand that I'm the lawyer representing
- (9) Hercules in this lawsuit? Do you understand
- (10) that?
- (11) A Yes. That's fine.
- (12) Q You and I had never spoken before you came up
- (13) here today, correct?
- (14) A No.
- (15) Q Do you remember talking to Mr. McDowell about
- (16) the barges that Larry Ballinger asked you to
- (17) change the chemical writing on?
- (18) A Do I remember the barges?
- (19) Q Yes. Do you remember the conversation? Start
- (20) again. The barges that were - that had
- (21) cyclohexane in them and you wrote down
- (22) butanol -
- (23) A Those barges were the company's, BASF.

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- (1) Q And when you -- when Mr. Ballinger asked you
- (2) to write down the different chemical on the
- (3) BASF barges, that occurred last year in 1997?
- (4) A Like I told him, I don't remember the day, but
- (5) that was the process that we had, to write the
- (6) chemicals on the reports.
- (7) Q Okay. What I'm trying to do is find out what
- (8) year we're talking about that happened.
- (9) A That was '97 because May was '97, no? In
- (10) April, it was '97.
- (11) Q So it was in April or May of '97, right before
- (12) Larry Ballinger left the company?
- (13) A More or less, yes.
- (14) Q Okay. And that was only four or five barges
- (15) that you can remember, correct?
- (16) A Yes.
- (17) Q Any other time in the 14 years you were with
- (18) Hercules, did anyone ever ask you to write
- (19) down wrong information on a Hercules document?
- (20) A No. But like I said, I was only responsible
- (21) for the last three years. The years before
- (22) then --
- (23) Q Okay. In the last three years you have been
- (24) with Hercules while you were responsible for
- (25) writing down the chemicals, did anyone ask you

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- (1) to write down the wrong chemical besides this
- (2) time with Larry Ballinger?
- (3) A No.
- (4) Q Besides this time with the BASF barges, did
- (5) you ever write down the wrong chemical on any
- (6) of the Hercules documents?
- (7) A Besides the BASF, you're saying?
- (8) Q Correct.
- (9) A No.
- (10) Q Do you know of any other documents at Hercules
- (11) during the last 14 years that you were there
- (12) that were not accurate records?
- (13) A No, I don't know.
- (14) Q During the 14 years you were at Hercules,
- (15) other than this time with the BASF barges, to
- (16) your knowledge, were the Hercules records
- (17) accurate?
- (18) A I wouldn't be able to answer that. I don't
- (19) know.
- (20) Q Was there a meter or a machine in the office
- (21) at Hercules to tell the wind direction?
- (22) A The office had a machine that would indicate
- (23) the wind.
- (24) Q Okay. And you all also had a wind sock out
- (25) there to tell the direction?

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- (1) A Yes. We had three.
- (2) Q While you were cleaning barges at Hercules
- (3) over the last 14 years, were there any
- (4) chemical spills into the Intracoastal Canal?
- (5) A That I remember, no.
- (6) Q Do you remember any oil spills occurring from
- (7) off of the barges at Hercules?
- (8) A Oil? No.
- (9) Q Okay. Before you all would go into a barge to
- (10) clean it, did a chemist go in and check the
- (11) safety before you went inside?
- (12) A Like I said, the company has two apparatus to
- (13) check the barges.
- (14) Q Did they also have a man, a chemist that would
- (15) go and check the barges also?
- (16) A Yes.
- (17) Q Do you suffer any bad health effects from
- (18) working so closely around the chemical barges
- (19) the last 14 years?
- (20) A To date, no.
- (21) Q Do you know of anyone there at Hercules who's
- (22) had health problems because of working around
- (23) the chemical barges?
- (24) A No. That's a simple question, because if I
- (25) had been contaminated, my children would have

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- (1) been sick when they were born.
- (2) Q Do you know of any other -- scratch that.
- (3) Start again. You told Mr. McDowell that you
- (4) thought what Mr. Ballinger told you to do was
- (5) wrong, correct?
- (6) A I told him.
- (7) Q All right. Do you know of any -- were you
- (8) ever asked to do anything else at Hercules by
- (9) anyone that you thought was wrong besides that
- (10) one time?
- (11) A No.
- (12) Q Do you know of any other violations of the
- (13) law, especially the environmental laws, at
- (14) Hercules?
- (15) A No.
- (16) MR. McDOWELL: I need to object to
- (17) the form of the question because I think he
- (18) told us he didn't know what the laws or
- (19) regulations were earlier.
- (20) Q (BY MR. STANFILL) Do you know of any other
- (21) actions or things that have happened at
- (22) Hercules during the 14 years that you have
- (23) been there that you thought were wrong like
- (24) what happened with Mr. Ballinger?
- (25) A No.

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- (1) Q Have you even heard of anything like that from
- (2) any of your friends or family that works there
- (3) at Hercules?
- (4) A That they've occurred?
- (5) Q Yes.
- (6) A In other words, that's the same question, has
- (7) anyone gotten sick?
- (8) Q No. This is: Has any other - have you heard
- (9) from any of the other employees at Hercules
- (10) that they were asked to do something improper
- (11) or bad, like you were?
- (12) A No. I didn't hear that.
- (13) MR. STANFILL: I'm going to pass
- (14) the witness.
- (15) FURTHER EXAMINATION
- (16) BY MR. McDOWELL:
- (17) Q Mr. Duarte, do you know Juan Riverra?
- (18) A Yes. We worked together.
- (19) Q And do you know where Juan Riverra is now?
- (20) A I don't know if he's working. I haven't
- (21) spoken to anybody.
- (22) Q Did you ever talk to Juan Riverra about the
- (23) false reports you had to fill out?

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- (1) A He was the one that helped me fill out the
- (2) forms because I don't know very much English.
- (3) He helped me fill out the forms.
- (4) Q So Mr. Riverra helped you fill out the forms
- (5) the way Mr. Ballinger told you to?
- (6) A Yes, because the order was given by Mr.
- (7) Ballinger. We didn't give the orders.
- (8) Q Were there any other records regarding the
- (9) hazardous chemicals that were filled out
- (10) incorrectly by you or Mr. Riverra?
- (11) A Apart of the one you're speaking of?
- (12) Q Yes.
- (13) A No.
- (14) MR. McDOWELL: Those are all the
- (15) questions I have. Thank you, sir.
- (16) MR. STANFILL: That's all. We
- (17) appreciate your time.

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- (1) (SIGNATURE PAGE FOR THE DEPOSITION OF
- (2) CLAUDIO DUARTE - FEBRUARY 11, 1998)
- (3) I, CLAUDIO DUARTE, do hereby certify that I
- (4) have read the foregoing transcript and that the same
- (5) and accompanying amendment sheets, if any,
- (6) constitute a true and complete record of my
- (7) testimony.
- (8) Signature of the witness
- (9) THE STATE OF TEXAS :
- (10) COUNTY OF HARRIS :
- (11) SUBSCRIBED AND SWORN to before me, the
- (12) undersigned authority, on this the day
- (13) of , 1998.
- (14)
- (15) Notary Public in Harris County
- (16) For the State of Texas
- (17) My Commission expires
- (18) No Changes Made Amendment Sheet(s) Attached
- (19) Hercules Marine Services Corporation vs. Bob Casale

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- (1) THE STATE OF TEXAS :
- (2) COUNTY OF HARRIS :
- (3) REPORTER'S CERTIFICATION TO THE
- (4) DEPOSITION OF CLAUDIO DUARTE
- (5) TAKEN ON FEBRUARY 11, 1998
- (6) I, Barbara DeVaney, Certified Shorthand
- (7) Reporter and notary public in and for the
- (8) State of Texas, hereby certify that this
- (9) deposition transcript is a true record of the
- (10) testimony given by the witness named herein,
- (11) after said witness was duly sworn by me.
- (12) I further certify that I am neither attorney
- (13) nor counsel for, nor related to, nor employed
- (14) by any of the parties to the action in which
- (15) this deposition is taken and, further, that I
- (16) am not a relative or employee of any counsel
- (17) employed by the parties hereto, nor
- (18) financially interested in the action.
- (19) Further certification requirements, if any,
- (20) pursuant to the rules will be certified to in
- (21) the supplemental certificate after they have
- (22) occurred.
- (23) SUBSCRIBED AND SWORN TO on this, the 16th day
- (24) of February, A.D., 1998.
- (25)
- (26) Barbara DeVaney
- (27) Certified Shorthand Reporter No. 678
- (28) For the State of TEXAS.
- (29) Business Address: 3730 Kirby, Suite 420,
- (30) Houston, TX 77098
- (31) Expiration of current certification: Dec. 31, 1998
- (32) My Notary Public Commission expires: August 1, 2000

Look-See Concordance Report

UNIQUE WORDS: 581
TOTAL OCCURRENCES: 1,624
NOISE WORDS: 385
TOTAL WORDS IN FILE: 6,553

SINGLE FILE CONCORDANCE

CASE SENSITIVE

NOISE WORD LIST(S): NOISE.NOI

EXCLUDES OCCURRENCES IN FIRST 4 PAGES

INCLUDES ALL TEXT OCCURRENCES

IGNORES PURE NUMBERS

WORD RANGES @ BOTTOM OF PAGE

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NUMBER OF WORDS SURPASSING OCCURRENCE THRESHOLD: 2

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